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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,025	06/15/2001	John A. Tomlin	Y0R920000712US1	7835
7590	06/17/2004		EXAMINER	
McGuireWoods, LLP 1750 Tysons Boulevard, Suite 1800 McLean, VA 22102-3915				BORISSOV, IGOR N
		ART UNIT		PAPER NUMBER
		3629		

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/881,025	TOMLIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Igor Borissov	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 15 June 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-6 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-6 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_ .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_ .

## DETAILED ACTION

### ***Specification***

The specification is objected to because of the following informalities: examiner recommend to add the definition of the character “ $\forall\tau$ ” on the page 9.

### ***Claim Objections***

Claims 2 and 5 are objected to because of the following informalities:

It is not clear how the optimization *problem* can *comprise* an *algorithm*.

Furthermore, the definition of optimization problem in claim 2 differs from the definition of optimization problem in claim 4.

Descriptions of the characters “ $\forall\tau$ ”, “ $\delta i$ ” and “ $\mu i$ ” are missing.

Appropriate corrections are required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitra et al. (US 2003/0035429).

Mitra teaches a computer-implemented method for bandwidth commerce in communication networks, comprising:

Claims 1 and 4. Inputting parameters of probable traffic patterns of each of a plurality of network users [0021]; [0031]; inputting price and demand parameters ; generating a computer model for an optimization problem subject to a plurality of

predetermined chance constraints and solving said problem to determine an amount of bandwidth to be purchased in a given time period in order to maximize profit (Figs. 2-4); [0087]- [0089]. Furthermore, Mitra teaches that said network users include serviceable and not serviceable customers by the provider's owned network [0021].

However, Mitra does not specifically teach that said customers include a plurality of customer classes.

The examiner points out that there is no indication in the specification that said feature (plurality of customer classes) provides the advantage over the prior art. Without such indication, it appears that providing plurality of customer classes or classifying customers in groups is a matter of business choice.

Claims 2 and 5. Mitra teaches statistical tools for optimizing pricing and capacity for bandwidth management using the computer (Figs. 2-4); [0087]- [0089]. The specifics of the statistical tools is an obvious matter of business choice.

Claims 3 and 6. Said method for optimizing pricing capacity for bandwidth management including running a non-linear programming software [0051]-[0085].

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892):

US 6,671,818 to Mikurak; teaches aspects of selling bandwidth in wholesale market.

The best foreign art paten found by the examiner:

EP 766473 to Chen et al; discloses digital layout method for near video demand system.

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***  
***Washington D.C. 20231***

or faxed to:

**(703) 872-9306** [Official communications; including After Final communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.



JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600